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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,564	03/06/2001	Ian John Smith		4049

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EXAMINER

GARBE, STEPHEN P

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/743,564

Applicant(s)

SMITH ET AL.

Examiner

Stephen Garbe

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-102 is/are pending in the application.
- 4a) Of the above claim(s) 29-34, 45, 51-56, 67, 72, 73, 75, 90, 91 and 93 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 28, 35-38, 41-44, 46-50, 57-60, 63-66, 68-71, 74, 76-78, 81-89, 92, 94-96 and 99-102 is/are rejected.
- 7) ☒ Claim(s) 39, 40, 61, 62, 79, 80, 97 and 98 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

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1. Applicant's election, without traverse, of the Species of Groups IB, drawn to a closable region comprising an extension of the second side wall and an end part of the closure flap; IIA, drawn to a bag mouth which comprises an end edge of the first wall; and IIIA, drawn to an end structure comprising a base panel upon which the bag can stably stand is noted. Applicant states that claims 28, 35-50, 57-71, 76-89, 92, and 94-102 are drawn to the elected species. However, claims 45 and 67 are not drawn to the elected species. They are drawn to species IIIB.
2. Claims 29-34, 45, 51-56, 67, 72, 73, 75, 90, 91, and 93 are withdrawn from consideration under 37 C.F.R. 1.142(b) as not being drawn to the elected species.
3. The drawings are objected to under 37 C.F.R. 1.83(a) as failing to illustrate adhesive on the second flap, as recited, for example, in claim 80.
4. Figures 11 and 12 are objected to because they do not include reference numbers 221 and 208 discussed on page 25.
5. Claim 42 is objected to because it appears that "standing" should be changed to "stand."
6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claim 63 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent for "said portion of said closure flap which is peelable away."

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 28, 35-38, 41, 42, 46-49, 70, 71, 74, 76-78, 81, and 84-87 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the bag illustrated in Figures 1-3 of German Gebrauchsmuster No. G9003401.5.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 43, 44, 82, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Gebrauchsmuster No. G9003401.5 in view of Moran, United States Patent No. 3,534,520. The bag illustrated in Figures 1-3 of the Gebrauchsmuster discloses all claimed features except for the bottom construction. Moran discloses a bag having the claimed bottom construction. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag illustrated in Figures 1-3 of the Gebrauchsmuster with the bottom construction disclosed by Moran, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

12. Claims 44 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Gebrauchsmuster No. G9003401.5 in view of Reiche, United States

Patent No. 3,435,736. The bag illustrated in Figures 1-3 of the Gebrauchsmuster discloses all claimed features except for the bottom construction. Reiche discloses a bag having the claimed bottom construction. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag illustrated in Figures 1-3 of the Gebrauchsmuster with the bottom construction disclosed by Reiche, because Reiche's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

13. Claims 50, 57-60, 63, 64, 68, 69, 88, 89, 92, 94-96, 101, and 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of German Gebrauchsmuster No. G9003401.5. Figures 1-3 of the Gebrauchsmuster disclose all claimed features except that the region between the tear lines 14 and 15 includes adhesive. It would have been obvious to eliminate the adhesive between tear lines 14 and 15 because the omission of an element and its function is obvious. *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965). The elimination of the adhesive would have been further obvious because the adhesive between the tear lines is not necessary for proper functioning of the bag.

14. Claims 50, 57-60, 63, 64, 68, 69, 88, 89, 92, 94-96, 101, and 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of German Gebrauchsmuster No. G9003401.5 in view of Roosa, United States Patent No. 5,199,792. Roosa discloses a pouch having a closure flap 28 that is secured to the front wall of the pouch only outside of tear lines 38. Accordingly, it would have been obvious to eliminate the adhesive between tear lines 14 and 15 of the Gebrauchsmuster

closure flap, as taught by Roosa, because the adhesive is not necessary for proper functioning of the bag.

15. Claims 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 64 and further in view of Moran, United States Patent No. 3,534,520. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Gebrauchsmuster bag with the bottom construction disclosed by Moran, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

16. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 64 and further in view of Reiche, United States Patent No. 3,435,736. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Gebrauchsmuster bag with the bottom construction disclosed by Reiche, because Reiche's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

17. Claims 99 and 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 88 and further in view of Moran, United States Patent No. 3,534,520. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Gebrauchsmuster bag with the bottom construction disclosed by Moran, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

18. Claim 100 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 88 and further in view of Reiche, United States Patent No.

3,435,736. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the modified Gebrauchsmuster bag with the bottom construction disclosed by Reiche, because Reiche's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

19. Claims 39, 40, 61, 62, 79, 80, 97, and 98 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. The remaining patents are cited to show other bags having similar features.

21. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.


22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

23. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

24. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.

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Stephen P. Garbe
Primary Examiner
Group 3720